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13 PRODUCTS INC.; LENNOX INTERNATIONAL INC.;
14 SUPERIOR FIREPLACE COMPANY

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 KIRK KEILHOLTZ and KOLLEEN
18 KEILHOLTZ for themselves and on behalf
19 of those similarly situated,

20 Plaintiffs,

21 v.

22 SUPERIOR FIREPLACE COMPANY;
23 LENNOX HEARTH PRODUCTS INC.;
24 LENNOX INTERNATIONAL INC. and
25 DOES 1 through 25, Inclusive,

26 Defendants.

Case No. 3:08-cv-00836-SI

**[PROPOSED] ORDER GRANTING
MOTION TO DISMISS UNDER FEDERAL
RULES OF CIVIL PROCEDURE 9(b) AND
12(b)(6)**

Date: October 3, 2008
Time: 9:00 a.m.
Courtroom: 10

Complaint Filed February 6, 2008

27 Defendant Superior Fireplace Company (“Superior”) has moved to dismiss the Complaint
28 filed by Plaintiffs Kirk and Kolleen Keilholtz (“Plaintiffs”) under Federal Rules of Civil
Procedure 9(b) and 12(b)(6). Having read and considered all papers supporting and opposing the
Motion, Court **HEREBY GRANTS** the Motion as follows:

1. Superior joined in the Motion to Dismiss Under Federal Rules of Civil Procedure
9(b) and 12(b)(6) filed by Defendants Lennox Hearth Products Inc. (“LHP”) and Lennox
International Inc. (“Lennox”) on June 27, 2008, which was also scheduled to be heard on October
3, 2008. The Court hereby grants Superior’s joinder and dismisses Plaintiffs’ claims as Ordered

1 in the Court's Order Granting the Motion to Dismiss Under Federal Rules of Civil Procedure 9(b)
2 and 12(b)(6) filed by LHP and Lennox.

3 2. The Court also dismisses the Complaint with prejudice against Superior on the
4 grounds that this entity merged with other companies in January 2001 and is no longer in
5 existence. Plaintiffs, therefore, cannot state a post-merger claim against Superior upon which
6 relief can be granted.

7
8 **IT IS SO ORDERED.**

9
10 DATED: _____

SIGNED: _____

JUDGE OF THE UNITED STATES
DISTRICT COURT